BAIL SLIP

The Appellant/Accused namely Nagendramani was directed to be released on bail by the order of this Court dt. 6.10.1998 and made in Crl. M.P.6337 of 1998 in CA 712 of 1996.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.1.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE A.KULASEKARAN

Criminal Appeal No. 712 of 1996

Magendramani ... Appellant

Vs

Inspector of Police,
K.V.Kuppam Circle.
(Cr. No.284 of 1993) ... Respondent

Prayer: Appeal against the judgment passed by the learned Principal Sessions Judge, N.A.A.District, in S.C.No. 130 of 1994 dated 16.7.1996.

For Appellant : Mr.V.Karthic

For Respondent : Mr.V.M.R.Rajendran
Addl. Public Prosecutor.

* * * * *

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J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR,. J)

The accused appeals.

2. The appellant was tried before the learned Principal Sessions Judge, Vellore, on a charge of murder on

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the allegation that at 10.30 a.m. on 19.9.93, he poured kerosene over his wife Jayasree Mary @ Ammu and set her ablaze, after tying her mouth with a towel. The learned trial Judge, finding the appellant guilty under Section 302 I.P.C., sentenced him to imprisonment for life.

2. The case of the prosecution, as could be discerned from the oral and documentary evidence, can be briefly summarised as follows:-

The deceased is the wife of the appellant. P.Ws.3 and 4 are the paternal uncles of the deceased and P.W.6 is the mother of the deceased. The deceased was given in marriage to the appellant on 26.5.93. After the marriage, the deceased and the appellant were brought to the house of P.W.6, the mother of the deceased, where they stayed for two days and went back to their residence at Vaduganthangal village. Two days prior to the date of incident, P.W.6 went to the house of the appellant to offer them presents in connection with the ensuing month of 'Aadi', which is the custom in the family and thereafter, P.W.6 went to the house of P.W.4, who was living at Vaduganthangal village, where P.W.3 was also living. On 18.9.93, a day prior to the date of incident, P.W.6 went to the house of her daughter and the appellant wanted to talk with P.W.6 and her family members about the conduct of the deceased. P.W.6 dissuaded the appellant from talking anything in the house and requested the appellant to allow her to take her daughter to her parental home as it is the custom. The elder sister and the brother-in-law of the appellant, who were there, told P.W.6 that they will take care of the deceased and wanted P.W.6 to leave the deceased in the house of the appellant. On the night of 18.9.93, P.W.6 and her husband went to a theatre to witness a movie and the appellant and the deceased were alone in the house. After witnessing a movie, P.W.6 along with her husband returned to the house of the appellant and took their bed. On the morning of 19.9.93, P.W.6 left for the house of P.W.4 along with her husband to take bath.

3. It is the further case of the prosecution that the appellant was suspecting the fidelity of his wife and was having a suspicion that she was having illicit relationship with P.W.8. He has also requested P.W.3, who is the junior paternal uncle of the deceased, to advice the deceased not to have any relationship with P.W.8 and that on 18.9.93, he complained to P.W.3 and also made derogatory remarks about the conduct of P.W.8. On 19.9.93, P.W.3 was proceeding to the bus stop to board a bus for Sethuvalai. The appellant was seen in front of a shop. He invited P.W.3 to go over to his house. P.W.3 went along with the

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appellant. The deceased was in the house. The appellant informed P.W.3 that he is not happy with the visits of P.W.8 to his house. The deceased complained to P.W.3 that the appellant is suspecting him and is abusing her all the time. The appellant getting annoyed at the complaint made by the deceased attempted to slap her, but P.W.3 intervened and pacified him. He left the house of the deceased. But, after walking to some distance, he remembered that he left the slippers in the house of the appellant. Therefore, he returned to the house of the appellant, but found the door closed. He called the deceased, but no one came out of the house. He opened the door and found the deceased lying dead. On seeing this, he came out of the house and shouted. He proceeded to the house of P.W.4 to inform P.W.6 and her husband. On the way, he saw the appellant and told him that his wife is lying dead with burn injuries. Thereafter, P.W.3 went to the house of P.W.4 and informed P.W.6 about the deceased lying dead in the house of the appellant with burn injuries. P.Ws.3, 4, 6 and P.W.6's husband proceeded to the house of the appellant and when they reached the house of the appellant, they saw him scaling over the wall and running away from the place.

4. P.W.1, the Village Administrative Officer of Keezhvilachur village, was in his office on 19.9.93. P.W.2, the village menial, was there along with him. The appellant appeared before him at 11.00 a.m. and confessed to him that he has murdered his wife by pouring kerosene and setting her ablaze. He narrated the whole events. The statement of the appellant was reduced into writing. The said statement is Ex.P.1. P.W.1, thereafter, took the appellant and Ex.P.1 along with his remarks, Ex.P.2, to K.V.Kuppam police station, where Exs.P.1 and P.2 as well as the appellant were handed over to P.W.12, the Sub-Inspector. P.W.12, on receipt of Ex.P.1, registered a case in Crime No.284 of 1993 under Section 302 I.P.C. and Ex.P.8 is a copy of the printed first information report. He arrested the appellant and locked him up. He sent the express reports to higher officials and informed the Inspector of Police. P.W.13, the Inspector of Police, on receipt of the information over phone, went to the scene of occurrence, where he was given a copy of the printed first information report and he took up investigation.

5. P.W.13, on taking up investigation after reaching the scene of occurrence, prepared the observation mahazar, Ex.P.5, attested by P.W.7 and in his presence, drew a rough sketch, Ex.P.9. He made arrangements to take photographs of the scene. He conducted inquest in the presence of panchayatdars between 2.30 p.m. and 5.30 p.m.

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and at the time of inquest, P.Ws.1 to 4, 6 and 7 were examined and their statements were recorded. The inquest report is Ex.P.10. He handed over the dead body, after the inquest, to a police constable with a requisition to the doctor for conducting autopsy.

6. On receipt of the requisition, P.W.5, the Civil Assistant Surgeon attached to Government Hospital, Gudiyatham, conducted autopsy on the body of Jayasree Mary @ Ammu and found the following:-

> " One general appearance of the body do tally with the police report. External exam: Injuries of burns was seen throughout the body except soles of the foot. Skin was seen peeled off superficially, black in colour, brittle. O/E Areas of redness was seen over the injuries of burns; blood clots was seen the structures underlying the skin. Singing of eyebrows, eyelashes and scalp hair was seen. About 10 cm. in length of scalp hair was seen over the parietal and occipital region of the scalp. Cloth was seen across the mouth and knot was seen over the occipital region. Cloth was seen fully burnt on the right side of the mouth and partly burnt on the left side of the mouth and knot.

The doctor issued Ex.P.4, the post-mortem certificate, with his opinion that the deceased would appear to have died of hypo-volumic shock due to injuries of extensive burns about 23 to 26 hours prior to post-mortem.

7. P.W.13, in the meantime, seized M.Os.1 to 9 under a mahazar, Ex.P.6, attested by P.W.7. The appellant was sent to Court for remand and further investigation was taken up by P.W.14 on 25.9.93. He questioned P.Ws.8, 9 and other witnesses and also the post-mortem doctor, P.W.5 and recorded their statements. After the completion of investigation, the final report was filed against the appellant on 30.6.94.

8. The appellant was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances and filed a written statement. In the written statement, the appellant has stated that his wife was complaining to him that she is not happy with the village life and was always pestering him that they must go to Vellore and was also asking him to take her to movies and that he has been advising her to behave properly. He has further stated that he has requested P.Ws.3 and 4 to advice the deceased and that on the night of 18.9.93, his mother-in-law, P.W.6 and

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his father-in-law went to witness a movie and that they left in the morning after informing him that they will return back to take their lunch, but did not come home till 9.30 a.m. and therefore, he went to the house of P.W.4 to bring his mother-in-law, P.W.6 and his father-in-law, where he found only his mother-in-law, P.W.6. According to him, he was informed by his mother-in-law that her husband had gone to take his bath and that he waited for more than 45 minutes. According to him, since his father-in-law did not return, he left a message with his mother-in-law, P.W.6 to come home after he returned and that on the way, he met P.W.3, who informed him that his wife is found in flames. He has further alleged that he ran to the house only to find the villagers trying to put down the fire and that he was sitting in the house and crying. According to him, his mother-in-law, P.W.6, accompanied by her husband came home and at noon, police officers from K.V.Kuppam police station came and that they took him to the police station. He has stated that he did not go to the Village Administrative Officer and did not give any statement and that at 9.00 p.m., the Village Administrative Officer was brought to the police station, who wrote a statement to the dictation of the police officers and that he was threatened to sign in the said statement. He has marked Exs.D.1 and D.2. Ex.D.2 is a letter dated 4.10.93 addressed to the Chief Minister's Special Cell, wherein he has stated that he did not confess to P.W.1 about his murdering his wife and that he was forced to sign in the statement prepared by the police officers with the help of P.W.1 after he was threatened and tortured. Ex.D.1 is the acknowledgement card issued by the postal department indicating that a copy of the letter sent to the Chief Minister's Special Cell and marked to the Village Administrative Officer, P.W.1, was received by the Village Administrative Officer, P.W.1, on 8.10.93. In short, the case of the appellant is that he did not go to the Village Administrative Officer and that he did not give the statement, Ex.P.1, but on the other hand, it was prepared at the police station by the Village Administrative Officer to the dictation of the police officers, in which he was forced to sign after he was threatened and tortured.

9. The learned counsel appearing for the appellant, though did not dispute the cause of death of Jayasree Mary @ Ammu that she died on account of burn injuries, which fact is proved by the evidence of the doctor, P.W.5, who conducted autopsy, strenuously contends that Ex.P.1 could not have been given by the appellant and it must have been prepared at the police station as claimed by the appellant in Ex.D.2, the letter of retraction sent to the Chief Minister's Special Cell, a copy of which is marked

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to the Village Administrative Officer, as could be seen from Ex.D.1. The learned counsel submits that the letter of retraction is dated 4.10.93 and the appellant having retracted the said alleged statement at the earliest point of time, that is, within 15 days, it could be presumed that the case of the appellant that the statement, Ex.P.1, would not have been given by the appellant and it must have been prepared at the police station can be accepted and to buttress his argument, the learned counsel relies upon the contradiction between the evidence of P.W.1 and P.W.4, since P.W.1 though stated that he never went to the scene of occurrence after the statement was given by the appellant, P.W.4 has admitted in cross-examination that the Village Administrative Officer came to the scene of occurrence at about 12.10 p.m. and that he informed P.W.1 about the occurrence. On the above contentions, we have heard the learned Additional Public Prosecutor.

10. As we stated earlier, the defence does not dispute the cause of death of Jayasree Mary @ Ammu, but only disputes the fact that the appellant caused the burn injuries. On the other hand, the prosecution relies upon Ex.P.1, the statement given by the appellant to P.W.1, the Village Administrative Officer at 11.00 a.m. This Court is, therefore, duty bound to find out whether the statement, Ex.P.1, could have been given by the appellant to the Village Administrative Officer, P.W.1, as claimed by the prosecution. Before we proceed to consider this, we have to consider the other circumstances also. This is a case where the occurrence was not witnessed by anyone and therefore, motive assumes importance. The evidence of the witnesses as well as the statement given by the appellant under Section 313 Cr.P.C. when he was examined, show that the deceased and the appellant were not happy with each other, since the deceased was pestering the appellant that they must leave the village and take up residence at Vellore and was also in the habit of asking her husband to take her to movies. The evidence of P.Ws.3, 4 and 6 also indicate that the appellant was complaining to them about the conduct of the deceased and in fact, told P.W.3 that he is not happy with the visits of P.W.8 to his house. P.W.6, in her evidence, stated that when she and her husband went to the village just before the month of 'Aadi' to bring her daughter back to parental home as is the custom, the appellant made complaints about the deceased and P.W.6 asked the appellant not to make complaints and told him that she is not interested in entertaining such complaints from the appellant. The evidence of P.W.3 also indicates that on the morning of 19.9.93, the appellant complained to P.W.3 and when the deceased intervened to say something, the appellant

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attempted to slap her, but he prevented the appellant from doing so. The evidence let in by the prosecution, therefore, shows that the appellant was not happy with his wife and therefore, we hold, on the evidence, that the prosecution has succeeded in establishing the motive part of the prosecution case.

11. In the above background, we will have to consider the evidence of P.W.1. P.W.1 is a Village Administrative Officer - a Government Servant. He is not obliged to either of the prosecution witnesses nor did the defence make any case when he was in the box to show that he was inimical towards the appellant. There is no reason for the Village Administrative Officer to come out with a false version by obliging the police officers to give evidence in Court that the appellant appeared before him and gave a statement confessing to his crime. On going through the evidence of P.W.1, we find it to be natural and trustworthy and we do not find any infirmity in his evidence. At this stage, it becomes relevant to consider Ex.D.2, the letter of retraction dated 4.10.93. It is the case of the appellant that a statement was prepared at the police station by the Village Administrative Officer at the instance of the police officers and nowhere he has stated that he had an occasion to peruse the statement alleged to have been prepared by the Village Administrative Officer at the instance of the police officers. If the appellant did not give the statement, Ex.P.1, to P.W.1 and if the statement, Ex.P.1, was prepared at the police station by P.W.1 at the instance of the police officers, then he could not have known the contents of Ex.P.1. In this background, we are unable to understand as to how the appellant was able to mention the contents of Ex.P.1 in the letter of retraction, Ex.D.2, sent by him to the Chief Minister's Special Cell. In fact, in the said letter of retraction, he has also mentioned that in the statement, it is found written that on seeing the villagers, he scaled over the wall and escaped from the scene of occurrence. This particular fact, apart from the other facts, could not have been within the knowledge of the appellant unless the statement was given by him to the Village Administrative Officer or he must have been informed about the contents of Ex.P.1 by someone. It is not the case of the appellant that he was informed about the contents of Ex.P.1, while he was in jail for him to mention the details found in the statement, Ex.P.1, in the letter of retraction, Ex.D.2. Therefore, it is clear that the appellant knew the contents of Ex.P.1 and he could have known the contents of Ex.P.1 only because he gave the said statement, Ex.P.1, to P.W.1, the Village Administrative Officer.

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12. Once, we come to the conclusion that the statement Ex.P.1, was given by the appellant to P.W.1, the Village Administrative Officer, then the contradiction found between the evidence of P.Ws.1 and 4 whether P.W.1 visited the scene of occurrence at 12.10 p.m. or not does not affect the substratum of the prosecution version. It is to be remembered that the extra judicial confession cannot always be termed as a tainted evidence and corroboration of such evidence is required only by way of abundant caution. If the Court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone and it is not open to the Court trying the criminal case to start with a presumption that extra judicial confession is always a weak type of evidence and it depends upon several factors like the nature of circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession, vide GURA SINGH -vs- STATE OF RAJASTHAN (2001 Supreme Court Cases (Crl.) 323). When we take the above principles into consideration and apply them to the facts of this case, it could be seen that the confession was made to an independent witness, who is a Government servant and it was made within an hour of the incident and the appellant was forced to appear before P.W.1 and give the statement in order to save himself from the apprehended attack by the relatives of the deceased and the villagers, since he scaled over the wall and ran away from the place to appear before P.W.1.

13. Apart from the extra judicial confession, it is also not in dispute that the appellant was alone with the deceased in the house at the relevant point of time and therefore, it is for the appellant to explain as to how his wife suffered burn injuries and the present theory that while he was returning from the house of P.W.4, he was informed by P.W.3 that his wife is in flames is too artificial to be accepted, since it is difficult to accept the said theory because P.W.3 would not have left the house of the appellant on seeing the deceased in flames and would have sent some other villager to inform P.W.6, who was in P.W.4's house. There was no need for P.W.3 to rush to the house of P.W.4 to inform P.W.6 for the appellant to meet him on the way. The theory of the defence, therefore, is to be rejected and the letter of retraction, Ex.D.2, in our view, was made only on the advice of some one. If the statement, Ex.P.1 was prepared at the police station by P.W.1 at the instance of the police officers and that the appellant was forced to sign after he was threatened and tortured, he would have certainly mentioned the said fact to the

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Magistrate before whom he was remanded; he did not do so, but came out with the letter of retraction after fifteen days, which makes us to believe that the said letter of retraction should have been sent by the appellant only on the advice of others. We, therefore, do not attach much importance to the letter of retraction and hold that the statement, Ex.P.1, was voluntarily given by the appellant to P.W.1 at 11.00 a.m.

14. Once we accept the evidence of P.W.1 and the statement, Ex.P.1, then the conviction of the appellant under Section 302 I.P.C. and the consequent sentence imposed upon him by the learned Sessions Judge are to be confirmed. Accordingly, they are confirmed. The appeal is dismissed. It is reported that the appellant is on bail. The learned Sessions Judge shall take steps to commit him to jail to undergo the remaining period of sentence.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To

1.The Principal Sessions Judge, N.A.A.District, Vellore.
2.The District Collector, Vellore.
3.The Director General of Police, Chennai.
4.The Superintendent, Central Prison, Vellore.
5.The Inspector of Police, K.V.Kuppam Circle,North Arcot Dt.
6.The Public Prosecutor, High Court, Madras.
7.The Judicial Magistrate I, Vellore.
8.-do-thro The Chief Judicial Magistrate,Vellore
9.The Chief Judicial Magistrate, Salem.

+1cc to Mr.V.Karthic Advocate Sr 777

MJ (CO)
km/18.1.

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